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14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 FIONA HARVEY,

18 Plaintiff,

19 v.

20 NETFLIX, INC. and NETFLIX  
21 WORLDWIDE ENTERTAINMENT, LLC,

22 Defendants.  
23

Case No. 2:24-cv-04744-RGK-AJR

**PLAINTIFF'S OPPOSITION  
TO DEFENDANTS' REQUEST  
FOR JUDICIAL NOTICE IN  
SUPPORT OF THEIR  
MOTION TO DISMISS**

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’  
REQUEST FOR JUDICIAL NOTICE**

**I. APPLICABLE LAW**

Plaintiff oppose Defendant’s Request for Judicial Notice in Support of Defendant’s Motion to Dismiss (“Request” or “RJN”) (ECF No. 28-03) with respect to Exhibits B-G<sup>1</sup> on the grounds that the documents they seek to judicially notice do not remotely satisfy the strict prerequisites contained in Rule 201 of the Federal Rules of Evidence. The documents are all newspaper or internet articles, many of which were generated by Defendants’ own promotion of the *Baby Reindeer* series. The information is not generally known and it is not capable of accurate determination by sources whose accuracy cannot be reasonably questioned. Nor is the information contained therein, “immediately ascertainable by resort to sources of reasonably indisputable accuracy,” as required under California law. *See* Evid. Code § 452(h); *Lockley v. Law Office of Cantrell, Green, Pekich, Ruz & McCort*, 91 Cal. App. 4th 875, 882 (2001); Jefferson, Cal. Evidence Benchbook, Judicial Notice §49.5 (4th ed. 2009). Defendants’ Request should be denied because: (1) the facts underlying the exhibits are not suitable for judicial notice; (2) they are not reasonably beyond dispute; and (3) even if judicially noticeable or otherwise provable, these facts are irrelevant.

Federal Rule of Evidence 201, which governs judicial notice, provides that “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Where factual findings or

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<sup>1</sup> Plaintiff has no objection to Exhibit A to the RJN which is a video interview of plaintiff.

1 the contents of the documents are in dispute, those matters of dispute are not  
2 appropriate for judicial notice. *See Darensburg v. Metropolitan Transp. Comm’n*,  
3 2006 WL 167657, \*2 (N.D. Cal., Jan. 20, 2006) (citing *Del Puerto Water Dist v. U.S.*  
4 *Bureau of Reclamation* 271 F. Supp. 2d 1224, 1234 (E.D. Cal., 2003)).

5 Public records, including judgments and other filed documents, are proper  
6 subjects of judicial notice. *See, e.g., United States v. Black*, 482 F.3d 1035, 1041 (9th  
7 Cir. 2007) (“[Courts] may take notice of proceedings in other courts, both within and  
8 without the federal judicial system, if those proceedings have a direct relation to  
9 matters at issue.”); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000)(taking  
10 judicial notice of a filed complaint as a public record). However, to the extent any  
11 facts in documents subject to judicial notice are subject to reasonable dispute, the  
12 Court will not take judicial notice of those facts. *See Lee v. City of L.A.*, 250 F.3d  
13 668, 689 (9th Cir. 2001) (“A court may take judicial notice of matters of public  
14 record.... But a court may not take judicial notice of a fact that is subject to  
15 reasonable dispute.” (internal quotation marks and citation omitted)).

## 16 **II. LEGAL ARGUMENT**

17 Defendant’s request judicial notice of newspaper articles that Netflix claims  
18 demonstrate: (1) plaintiff “was publicly accused of stalking and harassing Laura  
19 Wray, Jimmy Wray, Donald Dewar, and Keir Starmer” (Exhs. B-D); (2) “members  
20 of the public speculated that individuals (other than Harvey) were the inspiration for  
21 the Martha character in the Series.” (Exhs. E and F); and (3) “the existence of public  
22 controversy regarding Harvey’s attempted run for a Parliament seat and that  
23 Harvey’s involvement in politics existed in the public realm” (Exhs B and G). The  
24 court must consider each exhibit to the declaration “in turn to determine whether it is  
25 a proper subject of judicial notice...” *Gerritsen v Warner Bros. Entertainment Inc.*,  
26 112 F.Supp.3d 1011, 1022 (C.D. Cal. 2015).

1 Defendants' Request misconstrues the nature and purpose of "judicial notice"  
2 under Federal Rule of Evidence 201. "The Rule was intended to obviate the need for  
3 formal fact-finding as to certain facts that are undisputed and easily verified." *Walker*  
4 *v. Woodford*, 454 F. Supp. 2d 1007, 1022 (S.D. Cal. 2006) (emphasis added). The  
5 Ninth Circuit "tends to be strict with its application of Rule 201(b)." *Von Grabe v.*  
6 *Sprint PCS*, 312 F. Supp. 2d 1285, 1311. The rule is characterized by "[a] high  
7 degree of indisputability [as] the essential prerequisite to taking judicial notice of  
8 adjudicative facts." Advisory Committee Notes to Fed. R. Evid. 201 (a) & (b).  
9 "Because the effect of judicial notice is to deprive a party of an opportunity to use  
10 rebuttal evidence, cross-examination, and argument to attack contrary evidence,  
11 caution must be used in determining that a fact is beyond controversy under Rule  
12 201(b))." *Rivera v. Philip Morris, Inc.*, 395 F. 3d 1142, 1151 (9th Cir. 2005). "As  
13 Rule 201(b) teaches, judges may not defenestrate established evidentiary processes,  
14 thereby rendering inoperative the standard mechanisms of proof and scrutiny  
15 [through judicial notice], if the evidence is at all vulnerable to reasonable dispute."  
16 *Lussier v. Runyon*, 50 F. 3d 1103, 1115 (1<sup>st</sup> Cir. 1995).

17 The proffered exhibits fall far beyond the bounds of what is appropriate for  
18 judicial notice, and notably, for each of the exhibits presented, Defendants fail to  
19 allege which specific facts contained therein are actually beyond dispute and subject  
20 to judicial notice. As the information is either not beyond reasonable dispute,  
21 actually disputed, or irrelevant, it cannot serve as a piece of uncontested evidence to  
22 be considered at this stage of litigation, which is what Defendants seek to do with  
23 this Request.

24 The proffered exhibits are all news articles but courts in this Circuit have  
25 routinely rejected requests to take judicial notice of news articles. *Ali v Intel Corp.*,  
26 2018 WL 5734673, at \*3 (N.D. Cal. 2018)("Courts do not take judicial notice of  
27

1 newspaper articles for the truth of the contents of the articles.”); *Mat-Van, Inc. v*  
2 *Sheldon Good & Co. Auctions, LLC*, 07-CV-912-IEG BLM, 2008 WL 346421, at \*8  
3 (S.D. Cal. 2008)(“judicial notice of the articles is not proper under Rule 201”);  
4 *Lennard v. Yeung*, 2011 WL 13217784, at \*6 n. 43 (C.D. Cal. June 7, 2011)  
5 (“Because defendants ask the court to take judicial notice of the truth of the contents  
6 of the articles, their request for judicial notice must be denied.”); *Harrison v.*  
7 *Milligan*, 2012 WL 1835428, at \*1 (denying judicial notice of newspaper articles  
8 because plaintiff failed to address whether the newspaper articles is a source whose  
9 accuracy cannot reasonably be questioned).

10 Further, courts do not take judicial notice of newspaper articles for the truth of  
11 the contents of the articles. *See, e.g., Lennard v. Yeung*, 2011 WL 13217784, at \*6  
12 n.43 (C.D. Cal. June 7, 2011) (“Because defendants ask the court to take judicial  
13 notice of the truth of the contents of the articles, their request for judicial notice must  
14 be denied.”); *Harrison v. Milligan*, 2012 WL 1835428, at \*1 (denying judicial notice  
15 of newspaper articles because plaintiff failed to address whether the newspaper  
16 articles is a source whose accuracy cannot reasonably be questioned).

17 Moreover, Defendants make no showing that the newspaper articles are  
18 sources whose accuracy cannot reasonably be questioned. Therefore, the Court  
19 should not take judicial notice of any of the newspaper articles (Exhs. B-G) proffered  
20 by Defendants.

1 **VII. CONCLUSION**

2 For the reasons discussed above, except for Exhibit A, the Court should deny  
3 Defendants' Request for Judicial Notice.

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5 DATED: August 26, 2024

Respectfully submitted,

6  
7 By: /s/ Brian Levenson

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